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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/529,502	03/28/2005	Gabi Muller	12810-00039-US	6750
23416 7590 02/25/2009 CONNOLLY BOVE LODGE & HUTZ, LLP P O BOX 2207 WILMINGTON, DE 19899				
EXAMINER				
ROGERS, JAMES WILLIAM				
ART UNIT		PAPER NUMBER		
1618				
MAIL DATE		DELIVERY MODE		
02/25/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/529,502

**Applicant(s)**

MULLER ET AL.

**Examiner**

JAMES W. ROGERS

**Art Unit**

1618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 6 and 8-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 6 and 8-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This is a supplemental action to respond to applicants amendments to the claims filed 09/11/2008 which have been entered. Applicants have added new claims 25-27.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 14-20,23 and 26-27 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Specifically claims 14-20,23 recite either a) monomer D is present in an amount of no more than 5 wt% and b) E is present in an amount of not more than 10, the examiner could not find support within the specification for these new limitations. The only passage within applicant's specification the examiner could find for the amounts of monomer D was at paragraph [0102] of US 20050281774 A1 the US publication of applicants application, which stated the amounts of monomer D could be 0-10 wt% or 0-5 wt% or most preferably 0-2 wt%. The only passage within US 20050281774 A1 on the amount of monomer E the examiner could find was from 0-10 wt % at [0026]. Thus applicants do not have written support to claim that monomers D and E must be present because in every instance within the specification the monomers were always listed in a range that included zero, thus the

monomers were clearly optional components. Regarding new claims 26 and 27 the examiner could find no support for the new ranges of monomer A and monomer B. Specially the examiner could not find support for the upper limit of A of 45% when the lower limit is 35%, only the specific percent of 45 is encompassed within just one example. For monomer B the percentages of 52.5 and 62.5 are two specific values of monomer B for two different examples, however such a disclosure of just two data points does not give support to claim every value between 52.5 and 62.5.

### ***Response to Arguments***

Applicant's arguments filed 06/12/2008 have been fully considered but they are not persuasive. Applicants assert there was support within the specification for monomers D and E necessarily being present as claimed in claims 14-20 and 23, because these materials were clearly optional thus they could be present or not at all. The examiner disagrees with this assertion since this is clearly narrowing the scope of the range described within the specification because the range always included a point 0 which is now excluded by the claims.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 6 and 10-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hossel et al. (US 2001/0021375 A1, cited previously).

Hossel was described previously in the office actions filed 09/12/2007 and 03/12/2008.

Claims 6 and 8-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hossel et al. (US 2001/0021375 A1, '375 from hereon) in view of Hossel et al. (US 6,191,188 B1, cited previously, '188 from here on).

'375 and '188 were cited previously in the office action filed 09/12/2007 and 03/12/2008.

### ***Response to Arguments***

Applicant's arguments filed 06/12/2008 have been fully considered but they are not persuasive.

Applicants assert that one of the problems to be solved by the present application was to provide polymers that give clear fixing gels and '188 did not recognize this problem.

The relevance of this assertion is unclear. As presently amended applicants claims do not claim a clear gel, instead only a cosmetic composition is claimed that consists essentially of the copolymer claimed. The examiner can only conduct his search based upon the claimed invention, therefore since the claimed composition is obvious over '188 the rejection still stands.

Applicants assert that component C1(VI) is outside the scope of their claimed weight range and since the amount of C1(VI) is too large it cannot anticipate their claimed ratio of monomer C to B.

The relevance of this assertion is unclear. From the previous office action filed 9/21/2007 the examiner notes that monomer b) within '188 can be a mixture of two monomers such as N-vinylcaprolactam and N-vinylpyrrolidone therefore the limitations of the B and C monomers in the copolymer of applicants claimed invention are met. Monomer b) could be anywhere from 0.01 to 99.99% of the total weight of the copolymer.

### **Conclusion**

No claims are allowed. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES W. ROGERS, Ph.D. whose telephone number is (571)272-7838. The examiner can normally be reached on 9:30-6:00, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Michael G. Hartley/

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Supervisory Patent Examiner, Art Unit 1618